

GAO

Report to Congressional Requesters

February 1995

# WHISTLEBLOWER PROTECTION

## Continuing Impediments to Protection of Military Members



19950307 021

National Security and  
International Affairs Division

B-247485

February 2, 1995



The Honorable Strom Thurmond  
Chairman  
The Honorable Sam Nunn  
Ranking Minority Member  
Committee on Armed Services  
United States Senate

You requested that we review the protection afforded military whistleblowers from reprisal, including reprisal in the form of involuntary mental health evaluations. Specifically, our objectives were to determine whether

- the system established under the 1988 Military Whistleblower Protection Act (10 U.S.C. 1034) and section 546 of the National Defense Authorization Act for Fiscal Year 1993 (P.L. 102-484) provides an effective means for the investigation and disposition of alleged whistleblower reprisals and
- servicemembers have a mechanism to challenge alleged reprisals that occurred before enactment of the whistleblower act.

## Results in Brief

Under the process and procedures the Department of Defense (DOD) established to implement the whistleblower act, whistleblowers are treated differently because only those who make allegations of reprisals directly to DOD's Inspector General (IG) fall within the statutory protection of 10 U.S.C. 1034. Servicemembers who make allegations of reprisal to service or local IGs are not afforded protection under 10 U.S.C. 1034 and therefore do not receive certain protections that would otherwise be available to them if they made their allegations to the DOD IG.

At the time of our review, the DOD IG had completed few cases involving servicemembers' allegations that mental health evaluations had been used as reprisals for whistleblowing. Further, regulations due in January 1994 to implement section 546 had not been issued by the military services. Without such regulations, DOD has no assurance that the services are consistently protecting whistleblowers from reprisal.

The dissemination of information about the provisions of the whistleblower act and the proper procedures for servicemembers to follow when filing allegations of reprisal is a responsibility that has largely been left to the service and local IGs. Service regulations concerning

Attachment #

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whistleblower protection, which were required by March 1993, have only recently been issued, and not by all of the services. Additionally, the military services have not used alternative methods to inform whistleblowers about proper procedures for filing reprisal complaints. Accordingly, servicemembers may have been unaware of their rights and uninformed that the protections offered by 10 U.S.C. 1034 are available only if they file their allegations of reprisal with the DOD IG.

Servicemembers who believe they were the subject of reprisal actions for whistleblowing activities before the 1988 act may request relief from their service's Board for the Correction of Military Records (BCMR). Although legislation requires that requests be made within 3 years after a servicemember discovers an error or injustice, the Board may waive the time limit if a case is determined to have merit.

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## Background

In 1988, Congress enacted the Military Whistleblower Protection Act (10 U.S.C. 1034) to prohibit anyone from retaliating or taking reprisals against servicemembers who disclose information concerning government fraud, waste, and abuse to designated persons. Examples of retaliatory actions or reprisals against these whistleblowers are transfers, low performance appraisals, and referrals for involuntary mental health evaluations. The law also provides for after-the-fact protection; that is, it provides an avenue to correct a reprisal against a whistleblower.

Specifically, the law seeks to assist those military servicemembers who

- make a protected disclosure by communicating with or preparing a communication to certain designated officials, for example, a Member of Congress, the DOD IG, or an IG;
- disclose information that they reasonably believe constitutes a violation of law or regulation, mismanagement, a gross waste of funds, or a danger to public health or safety; and
- have an unfavorable personnel action taken or threatened to be taken, or have a favorable action withheld or threatened to be withheld, as a result of the disclosure.

The act requires the DOD IG to expeditiously investigate a whistleblower's allegations of reprisal that it receives within 60 days of the servicemember's initial awareness of the adverse action. If an investigation cannot be completed within 90 days of the date of receipt of the allegation, the IG is to notify the Secretary of Defense and the member concerning the reason and the expected date of the report. The DOD IG submits the results

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of an investigation to the Secretary of Defense, the service secretary, and the servicemember.

The law also allows the BCMR to review the results of the investigation in considering a servicemember's request for correction of records. Furthermore, the law permits the servicemember to appeal to the Secretary of Defense the final disposition of the service secretary's decision concerning the correction of records.

In 1989, DOD issued Directive 7050.6, "Military Whistleblower Protection," to implement the whistleblower act, which was incorporated into the Code of Federal Regulations (CFR) in 32 CFR, part 98a, in 1990. The directive set forth various responsibilities and requirements for handling whistleblower complaints, including both DOD IG and service IG investigation and reporting procedures. The directive allowed the DOD IG to delegate the responsibility to conduct the investigation to a service IG, in which case the provisions of 10 U.S.C. 1034 applied. Not all military whistleblowers' allegations of reprisal, however, are processed under 10 U.S.C. 1034; some may be processed under service IGS' general authority.

In December 1991, section 843 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 required the Secretary of Defense to prescribe regulations prohibiting members of the armed forces from retaliating against whistleblowers who make disclosures to specified individuals. In September 1992, DOD reissued Directive 7050.6, which, among other things, required the services to develop the regulations called for in section 843.

In October 1992, Congress enacted the National Defense Authorization Act for Fiscal Year 1993, section 546, which established procedures for referring servicemembers for inpatient and outpatient mental health evaluations, and also set forth the rights of servicemembers referred by their commands for such evaluations. It also strengthened protection for whistleblowers by prohibiting the use of mental health evaluations as reprisals against whistleblowers who make protected disclosures under 10 U.S.C. 1034. Congress recently enacted the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337), which amended 10 U.S.C. 1034 in several respects. The legislation has amended section 1034 to protect communications not only to a Member of Congress or an Inspector General but also to a member of a DOD audit, inspection, investigation, or law enforcement organization, and certain other

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designated persons. It essentially has placed the protected disclosure coverage from section 843 into 10 U.S.C. 1034. The legislation also requires the DOD IG to ensure that the investigating service IG is outside the immediate chain of command of both the whistleblower and the individual alleged to have taken the retaliatory action. Another important change is that allegations of sexual harassment and unlawful discrimination are now covered by 10 U.S.C. 1034.

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## Different Procedures Used to Handle Whistleblower Complaints

Under DOD's current procedures, whistleblowers receive 10 U.S.C. 1034 statutory protection pertaining to reprisals only if they report their allegations to the DOD IG. In effect, there is a two-track system for investigating and processing allegations of reprisal against whistleblowers—one for allegations submitted to the DOD IG and one for allegations made to service and local IGS.<sup>1</sup> DOD's current directive implementing the law provides that only allegations of reprisals made directly to the DOD IG are entitled to the law's protections. The DOD IG may delegate responsibility for conducting investigations to service IGS, who in turn often delegate this responsibility to installation-level IGS. When the DOD IG delegates an investigation, it maintains an oversight role to ensure that the criteria contained in its Guide to Investigating Military Reprisals are followed and that the act's statutory protection is accorded to the whistleblower. The investigating guide details the procedures for conducting investigations of alleged reprisal and documenting the evidence (see app. I for additional details). We reviewed 25 files of investigations conducted by the DOD IG or under its oversight and found that the investigators had generally followed the criteria in the DOD IG guidance. Of the 25 cases, reprisals were substantiated in 11 cases; not substantiated in 11 cases; and partially substantiated in 3 cases (see Scope and Methodology section for discussion of cases selected). We also determined that a military member applied to a BCMR in six cases. Of those six, the BCMR recommended action in two (one was in process during our review). We also researched a number of reprisal allegations that came to our attention during this assignment. However, we were unable to determine if those servicemembers had filed applications for correcting their records due to whistleblower reprisals.

Between enactment of 10 U.S.C. 1034 in September 1988 and February 1994, 233 cases of alleged reprisals against whistleblowers were

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<sup>1</sup>In a previous report entitled Whistleblower Protection: Impediments to the Protection of Military Members (GAO/NSIAD-92-125, May 27, 1992), we suggested that Congress consider amending the whistleblower act to extend its protection to those whistleblowers who make their complaint of reprisal to a service IG. This legislative change, however, was not made.

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filed with the DOD IG. Of those, 159 were investigated and closed, and 74 were open or under investigation. Of the total cases, DOD had received and completed investigations of 14 cases alleging the use of mental health evaluations as reprisals and was investigating an additional 17 cases. Of the 14 completed investigations, 2 of the allegations were substantiated, and 1 was partially substantiated.

Service and local IGS are authorized to investigate alleged reprisals for whistleblowing independent of and without the DOD IG's knowledge. Accordingly, DOD IG officials informed us that they were unaware of the number of investigations of reprisal that service or local IGS had initiated since September 1988.

According to DOD IG officials, servicemembers who report alleged reprisal for whistleblowing activities to the DOD IG have the following benefits that servicemembers who report to a service or local IG do not:

- The reprisal complaint is handled through a formal statutory process.
- Upon completion of the DOD IG investigation or approval by the DOD IG of an investigation done by a service or local IG, the servicemember automatically receives a redacted copy of the investigation report, copies of documents considered in the report, and redacted summaries of testimonies taken during the investigation.
- Although some service IGS can recommend that appropriate disciplinary action be taken by the military service department against anyone who takes action of reprisal, this type of recommendation is more likely to be made by the DOD IG.
- When the DOD IG investigation report recommends corrective action to relieve harm done to the servicemember by the reprisal, the servicemember, after applying to the BCMR for relief, can appeal the disposition of the service secretary's decision to the Secretary of Defense. In addition, the service secretary must reach a decision on the servicemember's application for relief within 180 days.

We identified several other benefits or advantages of reporting to the DOD IG, which are

- higher visibility of the case within the service department because the DOD IG investigation report is sent to the service secretary,
- greater assurance that the DOD IG's Guide to Investigating Military Reprisals will be followed during the reprisal investigation, and

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- advice from the service secretary that assistance in preparing an application to the BCMR may be sought from the legal office supporting the applicant's command in those cases in which the DOD IG investigation (1) substantiates an allegation of reprisal and (2) makes recommendations that require BCMR action.

To complicate matters, the whistleblower procedures described in the CFR provision (until late August 1994) required service and local IGs to notify the DOD IG when they initiated whistleblowers' reprisal investigations. This provision provided the DOD IG with the opportunity to determine whether whistleblower allegations made to local or service IGs should be handled under 10 U.S.C. 1034-type procedures. The original DOD directive, issued in 1989, also required that the DOD IG be notified, but the 1992 revision eliminated the requirement.

DOD IG officials said they recently revised the CFR to make it consistent with the 1992 DOD Directive 7050.6, which does not require notification. According to the DOD IG official in charge of reprisal investigations, the 1992 directive did not include the notification requirement because it could not be enforced. The DOD IG, however, had not previously changed the CFR provision due to an administrative oversight.

Servicemembers who are not aware of the distinctions between the levels of protection may not have their allegations handled to their best advantage. In one case, for example, a servicemember made his reprisal allegations to the local IG. The local IG's investigation did not substantiate the allegations, and the local IG did not notify the DOD IG of the case and investigation. Due to his dissatisfaction with the local IG investigation, this servicemember later filed the same allegations of reprisal with the DOD IG. The subsequent DOD IG investigation substantiated his allegations and recommended that the service take corrective actions.

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## Servicemembers May Not Have Been Adequately Informed of Their Rights

Until recently, servicemembers may not have been aware of their rights under 10 U.S.C. 1034 because the military services had not issued implementing regulations. The Air Force and the Army only recently issued required regulations to implement DOD Directive 7050.6 on whistleblower protection, and none of the services have issued the specific regulations to implement DOD Directive 6490.1 dealing with mental health evaluations. As a result, servicemembers also may not be aware of their rights under section 546.

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Section 843 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 required DOD to issue regulations prohibiting reprisals against whistleblowers by June 1992. DOD Directive 7050.6 (Sept. 1992) cited section 843 in requiring the services to implement regulations establishing procedures and policies for safeguarding whistleblowers by March 1993. In March 1994, the Army issued an updated regulation on Inspector General activities and procedures. It details prohibited activities, including reprisals against whistleblowers, and specifies that such actions are subject to the Uniform Code of Military Justice. In May 1994, the Air Force issued its revised Inspector General complaints instruction, which includes steps for protecting whistleblowers and makes reprisals punishable under the Uniform Code of Military Justice. Although the Navy has not issued an instruction covering whistleblower activities, in August 1994, the Navy instructed its members to follow the DOD IG Guide to Investigating Military Reprisals when handling whistleblower reprisal investigations.

As of July 1994, none of the services had implemented specific regulations detailing procedures regarding involuntary mental health evaluations, even though DOD Directive 6490.1 required them to do so by January 1994. The Navy and the Air Force have issued instructions to their IGs and mental health professionals, stating that section 546 and DOD Directive 6490.1 must be adhered to until specific regulations are issued. According to Army officials, however, the Army is not required to implement section 546 or DOD Directive 6490.1 until it issues its own regulation. The Army has not provided interim guidance pending the issuance of regulations.

In our 1992 report on military whistleblowing, we reported that in the past, the DOD IG had told the service IGs that they were required to explain the whistleblower act to the servicemember alleging reprisal only if the member specifically mentioned the law. Subsequently, in letters dated January 31, 1992, the DOD IG instructed service IGs to inform all whistleblowers that they are afforded statutory protection only if they make their allegation to the DOD IG. Furthermore, the Air Force IG instruction includes specific comments about informing the servicemember of the differences between filing a reprisal allegation with the DOD IG or the service IG. DOD IG officials said they have received numerous referrals from service and local IGs. However, the DOD IG's tracking system does not identify referred cases; therefore, we could not substantiate claims of referrals.

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Since our last report, the DOD IG has developed a poster on whistleblower protection for distribution to military installations. According to DOD IG officials, three posters were allotted for each location and were intended for display at the local IG's office, the legal assistance office, and the office of the military police. The poster advises servicemembers to request information about the whistleblower act from the local IG, legal assistance officer, or the DOD hotline, but it excludes information about the process of obtaining relief from reprisals. With so few available, the usefulness of the posters seems limited.

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## Whistleblowers Can Challenge Reprisals That Occurred Before the Whistleblower Act

The BCMR<sup>2</sup> system provides a mechanism for servicemembers to challenge reprisals that occurred before 10 U.S.C. 1034 was enacted in 1988. The general authority for correction of military records contained in 10 U.S.C. 1552 authorizes a BCMR to take appropriate action, including the correction or removal of records from the servicemember's personnel files, if it determines that personnel actions were taken in reprisal against the whistleblower. A BCMR can also make recommendations to the service secretary on the appropriateness of disciplinary actions against the individual(s) who committed the reprisal. Although servicemembers are required to request corrections to their records within 3 years after they discover reprisals, the Boards are authorized to waive the time limit if the case has merit. BCMR officials said that the Boards are usually lenient regarding the time limit.

The BCMRs are unique within DOD in that they function as super-appellate organizations. The civilian federal workforce has no equivalent. Each BCMR comprises civilians appointed by the respective service secretary. In general, upon application from the servicemember, a BCMR can correct any military record when the Secretary considers it necessary to correct an error or to remove an injustice.

BCMR officials said they could not recall a case in which a whistleblower had requested relief for an alleged reprisal in the form of a mental health evaluation before the act was effective. Each service BCMR annually receives several thousand petitions for corrections and changes, which are coded and logged into the BCMRs' system. BCMR officials were unable to identify any specific whistleblower cases or cases involving involuntary mental health evaluations because their systems do not include codes for whistleblower reprisal or involuntary psychiatric referral or evaluation. The BCMRs categorize cases by action sought—for example, changes to

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<sup>2</sup>The BCMRs were established in 1946.

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discharges, pay grades, and dates of rank and the elimination of missed promotions and low performance appraisals—and by broad categories of reasons for which actions are sought. Yet, as a result of a settlement in a 1977 court action, DOD and service directives require the BCMRS to establish a single index system for all BCMR cases except those involving characterizations of discharge. The system is to provide a means for applicants to identify or isolate cases that may be similar to theirs and indicate the grounds for which the BCMR or Secretary granted or denied relief. The Department of the Army was responsible for developing the initial format of the index system, establishing joint facilities for inspection, and copying opinions. The Executive Secretary of the Army BCMR told us that no code had been established for identifying whistleblower reprisal cases or any subcategory such as involuntary mental health evaluations because only a few of these cases had come to the Board's attention.

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## Recommendations to the Secretary of Defense

To ensure that all whistleblowers are afforded the type of protections provided under 10 U.S.C. 1034 and section 546, we recommend that the Secretary of Defense

- revise DOD Directive 7050.6 to require that (1) the military service and local IGs refer allegations of reprisal against whistleblowers to the DOD IG if an initial screening indicates that an allegation may have substantial merit and (2) the DOD IG use the same procedures for referred cases of reprisal allegations as it uses for cases it investigates or delegates for investigation and approve all resulting reports;
- direct the service secretaries to expeditiously develop and implement regulations establishing clear and specific procedures related to whistleblower reprisals, including mental health evaluations, as required by DOD directives;
- instruct the service secretaries and the DOD IG to develop strategies to ensure that servicemembers are informed of their rights, the extent of protection afforded, and the proper filing procedures relating to reprisal allegations for whistleblowing; and
- instruct the BCMRS to establish a code and/or a subcode within the BCMRS' index system for identifying cases and decisions involving whistleblower reprisal and involuntary mental health referrals and evaluations, as administratively required.

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## Agency Comments and Our Evaluation

In written comments on a draft of our report, DOD concurred with our four recommendations and said that a proposed revision to DOD Directive 7050.6 requires the services' Inspectors General to notify complainants who allege reprisal for whistleblowing that to receive statutory protection, they must make their complaints to DOD's Inspector General. The revised directive is expected to be published by January 1995. DOD stated that all services have now issued regulations to implement the current DOD Directive 7050.6 and that the services will be required to issue additional implementing instructions within 120 days following publication of the new directive. However, DOD stated that the services have not yet issued regulations, which were due in January 1994, to implement DOD Directive 6490.1 concerning mental health evaluations. Considering that the legislation underlying this directive was passed in October 1992, we believe that the delay in issuing implementing regulations is unreasonable and that DOD should require the services to expedite issuance of appropriate regulations.

Regarding our recommendation that a code be established within the BCMR index system to identify whistleblower reprisal and involuntary mental health referrals and evaluations, DOD stated that the Army should develop a code by June 1995 and that the other services should implement a code within 120 days of receipt of the Army modification.

DOD made other comments on our draft report, which we have incorporated as appropriate.

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## Scope and Methodology

We interviewed officials from the DOD and service IG offices and mental health offices and from each BCMR. We also reviewed the legislative history of the Military Whistleblower Protection Act, DOD and service policies and procedural guidance, pertinent legislation and congressional hearings, and 25 investigative case files at the office of the DOD IG. We tested each case file for completeness by applying DOD's criteria in the Guide to Investigating Military Reprisals. We also determined whether whistleblowers had petitioned the BCMR if their allegations had been upheld.

The 25 whistleblower cases we reviewed were divided into two groups: (1) the 14 cases involving involuntary mental health evaluations that were closed between 1988 and January 1994 and (2) 11 cases involving allegations of reprisals that had been substantiated after September 1992. Of the 25 investigations, 14 were conducted by the DOD IG, 4 were

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conducted by the service IG, and 7 were conducted by a local IG. Although our review of 25 cases cannot be projected to the universe of all whistleblower cases, we believe the 25 cases are indicative of reprisal investigations being conducted either by or for the DOD IG.

We conducted our work from January through September 1994 in accordance with generally accepted government auditing standards.

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We are sending copies of this report to the Secretaries of Defense, the Air Force, the Army, and the Navy and interested congressional committees. We will also provide copies to others upon request.

Please contact me at (202) 512-5140 if you or your staff have any questions concerning this report. Major contributors to this report were Foy D. Wicker, Galen L. Goss, MaeWanda Michael-Jackson, and Raymond J. Wyrsch.



Mark E. Gebicke  
Director, Military Operations  
and Capabilities Issues

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## Abbreviations

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| BCMR | Board for the Correction of Military Records |
| CFR  | Code of Federal Regulations                  |
| DOD  | Department of Defense                        |
| IG   | Inspector General                            |



# Excerpts From the DOD IG Guidance on Reprisal Investigations

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The Guide to Military Reprisal Investigations is designed to help those assigned to investigate allegations of reprisal against military whistleblowers. It details four questions and the steps that investigators should take to answer each question. The questions are:

1. Did the military member make a disclosure protected by statute?
2. Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected disclosure?
3. Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected disclosure?
4. Does the evidence establish that the personnel action would have been taken, withheld, or threatened if the protected disclosure had not been made?

The guide acknowledges that

the first three questions are relatively straightforward and usually quite simple to resolve. The last question is different from most investigations because investigators must focus on the question, 'Why?' In most other investigations, investigators stop investigating if they find that management acted within applicable guidelines and had the authority to act as they did. In reprisal investigations, investigators go one step further and ask 'why' management acted as they did. The fourth question, because it incorporates the question of management's motive and justification for the action, makes reprisal investigations very difficult.

In answering the fourth question, the guide states that

even if the action was warranted given the military member's performance and/or conduct and even if management had the authority to take the actions, the action could still have been reprisal if management would not have taken the action if the military member had not made a protected disclosure. The burden of proof is on management to show they would have acted as they did with any military member given similar circumstances without the protected disclosure. The burden is on the investigator to ensure all the necessary evidence has been gathered to objectively decide this question.

# Comments From the Department of Defense



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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NOV 29 1994

Mr. Mark E. Gebicke  
Director  
Military Operations and  
Capabilities Issues  
National Security and  
International Affairs Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Gebicke:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "WHISTLEBLOWER PROTECTION: Continuing Impediments to Protection of Military Members," (GAO Code 703058/OSD Case 9797) dated October 6, 1994. The Department agrees with the report.

We note that page 13 of the draft report inaccurately implies that we do not have a system to track complaints of reprisal. We have a detailed computerized case tracking system. In fact, while we do not specifically record whether a complaint was referred by a Service Inspector General that information is generally contained in the files of each case.

The DoD has prepared a proposed revision to DoD Directive 7050.6, which includes the requirement that the Military Department Inspectors General notify those complainants who allege reprisal for whistleblowing that complaints must be made to the Inspector General, DoD, to receive statutory protection. The revision is expected to be published by January 1995. In addition, all the Military Departments have now issued regulations to implement whistleblower protection as required by the current DoD Directive 7050.6.

The DoD comments on the recommendations in the report are enclosed. The DoD appreciates the opportunity to comment on the report.

Sincerely,

Derek J. Vander Schaaf  
Deputy Inspector General

Enclosure

GAO DRAFT REPORT - DATED OCTOBER 6, 1994  
(GAO CODE 703058) OSD CASE 9797

"WHISTLEBLOWER PROTECTION: CONTINUING IMPEDIMENTS  
TO PROTECTION OF MILITARY MEMBERS"

DEPARTMENT OF DEFENSE COMMENTS ON  
THE GAO RECOMMENDATIONS

\* \* \* \* \*

**RECOMMENDATION 1:** The GAO recommended that the Secretary of Defense, to ensure that all whistleblowers are afforded the type of protection provided under 10 U.S.C. 1034 and Section 546, instruct the Secretaries of the Military Departments and the Inspector General, DoD, to develop strategies to ensure that Service members are informed of their rights, the extent of protection afforded and the proper filing procedures relating to allegations of reprisal for whistleblowing. (pages 16-17/GAO Draft Report)

Now on p. 9.

**DOD RESPONSE:** Concur. A draft revision of DoD Directive 7050.6 has been developed, which includes instructions to the Military Departments to ensure that Service members are informed of their rights, the extent of protection afforded and the proper filing procedures relating to allegations of reprisal for whistleblowing. We expect the revised directive to be published by January 1995. The Military Departments will be required to issue additional implementing instructions, which should be published within 120 days following publication of the revised directive.

**RECOMMENDATION 2:** The GAO recommended that the Secretary of Defense, to ensure that all whistleblowers are afforded the type of protections provided under 10 U.S.C. 1034 and Section 546, revise DoD Directive 7050.6 to require that the (1) Military Service and local Inspectors General refer allegations of reprisal against whistleblowers to the Inspector General, DoD, at the request of informed Service members making such complaints and (2) the Inspector General, DoD, review and use the same procedures for the referred cases as it uses for investigating or delegating the conduct of investigation of allegations of reprisal it receives directly and approve all resulting reports. (page 16/GAO Draft Report)

Now on p. 9.

**DOD RESPONSE:** Concur. The revision of DoD Directive 7050.6 discussed in the response to Recommendation 1, implements Recommendation 2. It requires that the Inspectors General of the Military Departments notify complainants who allege reprisal for whistleblowing that complaints must be made to the Inspector General, DoD, to receive statutory protection. The revision is

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expected to be published in January 1995. In addition, the Inspectors General of the Army and the Navy are considering using a written notification or advisement of rights similar to that used by the Air Force.

RECOMMENDATION 3: The GAO recommended that the Secretary of Defense, to ensure that all whistleblowers are afforded the type of protections provided under 10 U.S.C. 1034 and Section 546, direct the Secretaries of the Military Departments to develop expeditiously and implement regulations establishing clear and specific procedures related to whistleblower reprisals, including mental health evaluations, as required by DoD directives. (page 16/GAO Draft Report)

Now on p. 9.

DOD RESPONSE: Concur. All the Military Departments have implemented the provisions of DoD Directive 7050.6. The Navy issued the Secretary of the Navy Instruction 5370.1A on September 27, 1994. The DoD Directive 6490.1 concerning mental health evaluations has not yet been implemented by the Services.

RECOMMENDATION 4: The GAO recommended that the Secretary of Defense, to ensure that all whistleblowers are afforded the type of protections provided under 10 U.S.C. 1034 and Section 546, instruct the Military Department Boards for the Correction of Military Records to establish a code and/or a subcode within the Board index system for identifying whistleblower reprisal and involuntary mental health referrals and evaluations cases and decisions, as administratively required. (pages 16-17/GAO Draft Report)

Now on p. 9.

DOD RESPONSE: Concur. The Army Board is responsible for modifying the software program to establish a code for identifying whistleblower reprisal and mental health referrals and evaluations cases and decisions. The Army code should be established by June 1995. Similar code requirements are expected to be implemented by the Navy and the Air Force within 120 days following receipt of the modification.